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K.G., Appellant)	
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and)	Docket No. 21-1350
)	Issued: April 20, 2022
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
Norfolk, VA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 13, 2021 appellant filed a timely appeal from an August 31, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issue is whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP).

² The Board notes that, following the August 31, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On March 17, 2021 appellant, then a 37-year-old deployment officer, filed a traumatic injury claim (Form CA-1) alleging that he contracted COVID-19 on January 14, 2021 while in the performance of duty. On the reverse side of the claim form, C.P., a supervisor with the employing establishment, contended that appellant's alleged injury did not occur in the performance of duty. Appellant stopped work on January 17, 2021.

On January 19, 2021 Dr. Tamara Mamedova, a Board-certified emergency medicine specialist, noted that appellant was experiencing COVID-19 symptoms.

Appellant submitted a laboratory test result, dated January 24, 2021, from Dr. Evan Rekant, a Board-certified emergency medicine specialist, which revealed that he tested positive for COVID-19.

In a development letter dated May 11, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In notes dated February 9, 17, and 24, 2021, Dawn Culley, a nurse practitioner, and Teresa Snider, a licensed practical nurse, noted that appellant was examined related to his COVID-19 diagnosis.

A letter dated May 18, 2021 from T.D., a mission support specialist with the employing establishment, noted that appellant's supervisor confirmed that appellant was exposed to two individuals who tested positive for COVID-19.

By decision dated May 18, 2021, OWCP accepted appellant's traumatic injury claim for COVID-19. In a separate decision of even date, it denied his claim for COP, finding that he did not report the injury on a form approved by OWCP within 30 days following the injury.

On July 19, 2021 appellant requested reconsideration of OWCP's May 18, 2021 decision and submitted additional medical evidence.

OWCP received a home health certification and plan of care form dated February 9, 2021 from Ms. Culley, which noted a diagnosis of pneumonia due to COVID-19 and evaluation for homecare treatment.

A March 4, 2021 follow-up note from Brittany Chambers, a nurse practitioner, noted that appellant was admitted to homecare following his hospitalization for COVID-19.

On June 3, 2021 Tyler Volpe, a physician assistant, noted that appellant was held off work from January through March, 2021 while he was hospitalized for COVID-19.

In support of his request for reconsideration, appellant submitted a statement dated July 14, 2021, wherein he related that on January 15, 2021 he was assigned to security detail for the Presidential Inauguration in Washington, D.C. He further recounted that his COVID-19 symptoms began on January 14, 2021 and that he was hospitalized through February 7, 2021. Appellant

explained that he was unable to file the Form CA-1 within the 30-day timeframe because he was unaware that he could receive COP for his injury at the time. OWCP received a letter of even date from S.N., a commander with the employing establishment, who confirmed that appellant's deployment unit was selected to travel to Washington, DC.

By decision dated August 31, 2021, OWCP denied modification of its May 18, 2021 decision.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

Appellant filed a claim for traumatic injury on a Form CA-1 dated March 17, 2021. By decision dated May 18, 2021, OWCP denied his request for COP, as his claim was not filed within 30 days of the accepted January 14, 2021 employment injury. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of COVID-19, which it accepted as employment related. Appellant contends that he delayed in filing his claim for COP because he was unaware that he could receive COP for his injury. The Board however finds that as appellant filed a Form CA-1 on March 17, 2021, he did not file within 30 days of the accepted January 14, 2021 employment injury.⁷ Accordingly, appellant is not entitled to COP.

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁷ *See supra* notes 5-6.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

ORDER

IT IS HEREBY ORDERED THAT the August 31, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2022
Washington, D.C.

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board